

Amendment No. 1 to SB1190

Johnson  
Signature of Sponsor

**AMEND Senate Bill No. 1190**

**House Bill No. 302\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 56-13-114, is amended by adding the following language as new, appropriately designated subsections:

(j)

(1) Any captive insurance company failing to pay premium tax payments as provided by this chapter shall forfeit and pay to the state, in addition to the amount of the unpaid taxes, a penalty of five hundred dollars (\$500) for the first month or fractional part of the first month of delinquency; provided, that should the period of delinquency exceed one (1) month, the company shall pay an additional five hundred dollars (\$500) for the second month or fractional part of the second month. Any premium tax payment that is not paid within sixty (60) days of the due date is a violation of this chapter and is subject to § 56-13-120. The commissioner has the discretion, upon written application and for good cause shown, to waive the penalties of this subdivision (j)(1).

(2) All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The interest shall apply to any part of the tax unpaid by the due date and no interest may be waived.

(k) The commissioner shall promulgate rules governing the manner in which the premium tax shall be paid. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The rules may provide for the making of premium tax payments through electronic means. The rules

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may also provide for a convenience fee to cover the costs of accepting electronic premium tax payments. In no event shall the convenience fee exceed the actual costs incurred by the department in accepting electronic premium tax payments in addition to any applicable penalty and interest fees.

SECTION 2. Tennessee Code Annotated, Section 56-13-118, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) As used in this section, "dormant captive insurance company" means any captive insurance company other than a captive risk retention group that has:

(1) Ceased transacting the business of insurance, including the issuance of insurance policies; and

(2) No remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a letter of dormancy under this section.

(b) A captive insurance company domiciled in this state that meets the criteria of subsection (a) may apply to the commissioner for issuance of a letter of dormancy. The commissioner may issue the captive insurance company a letter of dormancy in the commissioner's sole discretion. A letter of dormancy issued by the commissioner shall specify an expiration date that is no later than five (5) years from the date of issuance. The commissioner may, before the expiration date, issue a superseding letter of

dormancy. The superseding letter of dormancy shall specify a new expiration date no later than five (5) years from the date of issuance of the superseding letter.

(c) A dormant captive insurance company that has been issued a letter of dormancy shall:

(1) Possess, and thereafter maintain unimpaired, paid-in capital and surplus of not less than twenty five thousand dollars (\$25,000);

(2) Prior to March 15 of each year, submit to the commissioner a report of its financial condition as required by § 56-13-108; and

(3) Pay the fee established by § 56-4-101(a)(4).

(d) A dormant captive insurance company that has been issued a letter of dormancy shall not be subject to or liable for the payment of the annual minimum aggregate tax provided for in § 56-13-114(c). A dormant captive insurance company shall be liable for payment of premium tax on premiums received before issuance of a letter of dormancy.

(e) A dormant captive insurance company that has been issued a letter of dormancy must apply to the commissioner for and receive a rescission of the letter of dormancy and restore its unimpaired paid-in capital and surplus to the amount required in § 56-13-105 prior to issuing any insurance policies and resuming the business of insurance.

(f) The commissioner shall rescind a letter of dormancy issued to any captive insurance company if that company no longer meets the criteria of subsection (a). Such rescission shall be effective as of the date the company ceased to meet the criteria of subsection (a).

(g) In the commissioner's sole discretion, an examination required by § 56-13-109 may be held in abeyance during the time the dormant captive insurance company is under a letter of dormancy.

(h) An application for a letter of dormancy and an application for a rescission of a letter of dormancy constitute a change of business plan pursuant to § 56-4-101(a)(8).

(i) The captive insurance company is responsible for all taxes, fees, and statutory requirements of this title for the year in which the rescission or expiration of its letter of dormancy occurs.

(j) The commissioner may promulgate rules as necessary to effectuate the purposes of this section. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. Tennessee Code Annotated, Section 56-13-114(c), is amended by adding the following language as a new subdivision (3):

(3) A dormant captive insurance company that has been issued a letter of dormancy under Section 3 of this act is not subject to or liable for the payment of the annual minimum aggregate tax established under this subsection (c).

SECTION 5. Tennessee Code Annotated, Title 56, Chapter 13, Part 2, is amended by adding the following language as a new, appropriately designated section:

(a)

(1) Upon the application of a protected cell captive insurance company, one of its protected cells may be converted to any form of captive insurance company authorized pursuant to this chapter with the consent of the commissioner. Upon compliance with part 1 of this chapter, the commissioner may issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

(2) If the converting protected cell is a series of a limited liability company, the cell shall file organizational documents with the secretary of state that comply with part 1 of this chapter and titles 48 and 61 as applicable. The organizational documents shall include the date of formation as a series. Upon

conversion, the formation date of the series shall be deemed the formation date of the new entity. The new entity shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor series.

(3) If the converting protected cell is any other type of incorporated protected cell entity, then the converting protected cell shall submit amended organizational documents to the secretary of state that comply with part 1 of this chapter and titles 48 and 61 as applicable.

(4) If the converting protected cell is neither a series of a limited liability company nor an incorporated protected cell, the cell shall file organizational documents with the secretary of state that comply with part 1 of this chapter, titles 48 and 61 as applicable, or any other applicable provision governing formation of that type of entity. The organizational documents shall include the date of formation as a cell. Upon conversion, the formation date of the cell shall be deemed the formation date of the new entity. The new entity shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor cell.

(b) A captive insurance company may apply to the commissioner for conversion to become a protected cell captive insurance company under any form permitted under this part. Upon compliance with this part, approval by the commissioner, and the filing of amended organizational documents with the secretary of state, the captive insurance company shall be issued a revised certificate of authority. The effective date of the revised protected cell captive insurance company's certificate of authority shall remain the same as the effective date of the prior captive insurance company.

(c) With the consent of both the affected protected cell captive insurance companies and the commissioner, an individual protected cell of a captive insurance company may disaffiliate from one protected cell captive insurance company and affiliate

with another protected cell captive insurance company. The commissioner may require the affected protected cell captive insurance companies and the individual protected cell to make necessary changes to their business plans, organizational documents, participation agreements, or other governing documents prior to approving the change in affiliation. The formation date of a protected cell that affiliates with another protected cell captive insurance company shall be the date of its original formation with the prior protected cell captive insurance company. A protected cell shall maintain and carry over all assets and liabilities, including outstanding insurance liabilities, to the new protected cell captive insurance company.

(d) Solely for the purposes of §§ 56-13-108, 56-13-109, and 56-13-114, the date of final conversion or disaffiliation of a protected cell shall be deemed a termination of that cell from the prior entity. The prior entity shall be responsible for the accounting, oversight, and premium tax on any transactions prior to the date of final conversion or disaffiliation. The successor entity shall be responsible for the accounting, oversight, and premium tax on any transactions on or after the date of final conversion or disaffiliation.

SECTION 6. Tennessee Code Annotated, Section 56-1-413, is amended by deleting subsection (b) in its entirety and substituting instead the following language:

(b) All persons engaging, assisting, or making the required examination under this chapter shall be regular state employees, and their entire expenses and compensation shall be paid only by the state as now provided for by law.

Notwithstanding this subsection (b), the commissioner may contract, in accordance with applicable state contracting procedures, for qualified actuaries and financial examiners the commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided, that, with respect to financial examinations, the compensation and per diem allowances paid to the persons shall be

fixed by the commissioner at a reasonable amount commensurate with usual compensation for like services.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.